


**COUNTY OF KAUAI**

**OFFICE OF THE COUNTY ATTORNEY**

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Attorney-Client Communication  
and/or Attorney Work-Product

April 27, 2005

TO: JoAnn A. Yukimura  
Planning Committee Chair

FROM: Lani D.H. Nakazawa   
County Attorney

SUBJECT: Single Family Vacation Rentals

This responds to your requests for information regarding single family vacation rentals, dated December 20, 2004 and April 20, 2005.

Our office continues to review this issue and is unable at this time to overturn the prior opinion issued by Deputy County Attorney Blaine Kobayashi on July 11, 2000. In addition, we believe that the issues raised or implied in your memo should be resolved by amendment of the Comprehensive Zoning Ordinance, not by reversal of this opinion.

As to your request for a representative from this office to attend upcoming meetings, we respectfully decline to do so. We would like to avoid any potential conflict of interest issues should this matter lead to litigation in the future as our office would be charged with representing the County's interest, and not necessarily any decisions made by this public group.

As to your request for the legality of single-family vacation rentals in the agricultural district, we will be meeting with the Planning Department in the near future on that issue.

Finally, as to your previous request for U.S. Supreme Court cases regarding deprivation of all economic use of land, please find attached several cases. We apologize for the delay in responding to this request.

Westlaw.

121 S.Ct. 2448

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533 U.S. 606, 121 S.Ct. 2448, 150 L.Ed.2d 592, 69 USLW 4581, 69 USLW 4605, 52 ERC 1609, 32 Env'tl. L. Rep. 20,516, 1 Cal. Daily Op. Serv. 5439, 2001 Daily Journal D.A.R. 6685, 14 Fla. L. Weekly Fed. S 458, 2001 DJCAR 3358

(Cite as: 533 U.S. 606, 121 S.Ct. 2448)

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### Briefs and Other Related Documents

Supreme Court of the United States  
Anthony PALAZZOLO, Petitioner,

v.

RHODE ISLAND et al.  
No. 99-2047.

Argued Feb. 26, 2001.  
Decided June 28, 2001.

Landowner brought inverse condemnation action against the Rhode Island Coastal Resources Management Council (CRMC), alleging that the CRMC's denial of his application to fill 18 acres of coastal wetlands and construct beach club constituted a taking for which he was entitled to compensation. After bench trial, the Rhode Island Superior Court, Washington County, entered judgment for CRMC. The Rhode Island Supreme Court, 746 A.2d 707, affirmed, and landowner petitioned for certiorari. The United States Supreme Court, Justice Kennedy, held that: (1) claims were ripe for adjudication; (2) acquisition of title after the effective date of the regulations did not bar regulatory takings claims; and (3) *Lucas* claim for deprivation of all economic use was precluded by undisputed value of portion of tract for construction of residence.

Affirmed in part, reversed in part and remanded.

Justices O'Connor and Scalia filed concurring opinions.

Justice Stevens filed opinion concurring in part and dissenting in part.

Justice Ginsburg filed dissenting opinion, in which Justices Souter and Breyer joined.

Justice Breyer filed dissenting opinion.

### West Headnotes

#### [1] Constitutional Law ⇨280

92k280 Most Cited Cases

The Takings Clause of the Fifth Amendment is applicable to the States through the Fourteenth Amendment. U.S.C.A. Const.Amend. 5, 14.

#### [2] Eminent Domain ⇨2.1

148k2.1 Most Cited Cases

(Formerly 148k2(1))

Taking occurs when the government encroaches upon or occupies private land for its own proposed use. U.S.C.A. Const.Amend. 5.

#### [3] Eminent Domain ⇨2.1

148k2.1 Most Cited Cases

(Formerly 148k2(1))

Even a minimal permanent physical occupation of real property by government requires compensation under the Takings Clause. U.S.C.A. Const.Amend. 5.

#### [4] Eminent Domain ⇨2.10(1)

148k2.10(1) Most Cited Cases

(Formerly 148k2(1.2))

Regulation which denies all economically beneficial or productive use of land will require compensation under the Takings Clause. U.S.C.A. Const.Amend. 5.

#### [5] Eminent Domain ⇨2.10(1)

148k2.10(1) Most Cited Cases

(Formerly 148k2(1.2))

Where a regulation places limitations on land that fall short of eliminating all economically beneficial

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112 S.Ct. 2886

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505 U.S. 1003, 112 S.Ct. 2886, 120 L.Ed.2d 798, 60 USLW 4842, 34 ERC 1897, 22 Env'tl. L. Rep. 21,104

(Cite as: 505 U.S. 1003, 112 S.Ct. 2886)

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**Briefs and Other Related Documents**

Supreme Court of the United States  
David H. LUCAS, Petitioner,  
v.  
SOUTH CAROLINA COASTAL COUNCIL.  
No. 91-453.

Argued March 2, 1992.  
Decided June 29, 1992.

Owner of beachfront property brought action alleging that application of South Carolina Beachfront Management Act to his property constituted a taking without just compensation. The Common Pleas Court of Charleston County, Larry R. Patterson, Special Judge, awarded landowner damages and appeal was taken. The South Carolina Supreme Court, Toal, J., reversed, 304 S.C. 376, 404 S.E.2d 895. Certiorari was granted, 112 S.Ct. 436, and the Supreme Court, Justice Scalia held that: (1) property owner's claim was ripe for review, and (2) South Carolina Supreme Court erred in applying "harmful or noxious uses" principle to decide case.

Reversed and remanded.

Justice Kennedy, filed opinion concurring in the judgment.

Justices Blackmun and Stevens filed separate dissenting opinions.

Justice Souter filed separate statement.

West Headnotes

[1] Federal Courts ⇨ 510  
170Bk510 Most Cited Cases

That South Carolina Beachfront Management Act, which landowner claimed deprived him of all economically viable use of property, was amended, after briefing and argument before South Carolina Supreme Court but prior to issuance of that court's opinion, to authorize issuance of special permits for construction or reconstruction of habitable structures in certain circumstances did not render unripe landowner's deprivation claim; South Carolina Supreme Court rested its judgment on merits of claim, rather than on ripeness grounds, thus precluding landowner from asserting any takings claim with respect to deprivation which had occurred prior to amendment, and landowner alleged injury-in-fact as to preamendment deprivation. S.C.Code 1976, §§ 48-39-250 et seq., 48-39-290(D)(1).

[2] Eminent Domain ⇨ 2.1  
148k2.1 Most Cited Cases  
(Formerly 148k2(1))

[2] Eminent Domain ⇨ 2.10(1)  
148k2.10(1) Most Cited Cases  
(Formerly 148k2(1))

There are two discrete categories of regulatory deprivations that are compensable under Fifth Amendment without case-specific inquiry into public interest advanced in support of restraint; the first encompasses regulations that compel property owner to suffer physical invasion of his property, and the second concerns situation in which regulation denies all economically beneficial or productive use of land. U.S.C.A. Const.Amend. 5.

[3] Eminent Domain ⇨ 2.10(1)  
148k2.10(1) Most Cited Cases  
(Formerly 148k2(1))

When owner of real property has been called upon to sacrifice all economically beneficial use of property in name of common good, that is, to leave his property economically idle, he has suffered a "taking" within meaning of Fifth Amendment.

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98 S.Ct. 2646

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438 U.S. 104, 98 S.Ct. 2646, 57 L.Ed.2d 631, 11 ERC 1801, 8 Envtl. L. Rep. 20,528

(Cite as: 438 U.S. 104, 98 S.Ct. 2646)

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**Briefs and Other Related Documents**

Supreme Court of the United States  
 PENN CENTRAL TRANSPORTATION  
 COMPANY et al., Appellants,  
 v.  
 CITY OF NEW YORK et al.  
 No. 77-444.

Argued April 17, 1978.  
 Decided June 26, 1978.  
 Rehearing Denied Oct. 2, 1978.  
 See 439 U.S. 883, 99 S.Ct. 226.

Following refusal of New York City Landmarks Preservation Commission to approve plans for construction of 50-story office building over Grand Central Terminal, which had been designated a "landmark," the terminal owner filed suit charging, inter alia, that application of landmarks preservation law constituted a "taking" of the property without just compensation and arbitrarily deprived owners of their property without due process. The Supreme Court, Trial Term, New York County, granted injunctive relief. The Supreme Court, Appellate Division, 50 A.D.2d 265, 377 N.Y.S.2d 20, reversed. The Court of Appeals, 42 N.Y.2d 324, 397 N.Y.S.2d 914, 366 N.E.2d 1271, affirmed, and owners appealed. The Supreme Court, Mr. Justice Brennan, held that: (1) owners could not establish a "taking" merely by showing that they had been denied the right to exploit the superadjacent airspace, irrespective of remainder of the parcel; (2) landmark laws which embody a comprehensive plan to preserve structures of historic or aesthetic interest are not discriminatory, like "reverse spot" zoning; (3) that the law affected some owners more severely than others did not itself result in a "taking," and (4) the law did not interfere with owners' present use or prevent it from

realizing a reasonable rate of return on its investment, especially since preexisting air rights were transferable to other parcels in the vicinity.

Judgment of Court of Appeals affirmed.

Mr. Justice Rehnquist filed a dissenting opinion in which Mr. Chief Justice Burger and Mr. Justice Stevens joined.

**West Headnotes****[1] Eminent Domain ⇨2.27(3)**

148k2.27(3) Most Cited Cases  
 (Formerly 148k2(5), 148k2(1))

Existence of a duty to keep up the property is an element to be factored into an inquiry concerning constitutionality of landmark restrictions. U.S.C.A.Const. Amends. 5, 14.

**[2] Eminent Domain ⇨2.1**

148k2.1 Most Cited Cases  
 (Formerly 148k2(1))

There is no set formula for determining when justice and fairness require that economic injuries caused by public action be compensated by the government, rather than remain disproportionately concentrated on a few persons. U.S.C.A.Const. Amends. 5, 14.

**[3] Eminent Domain ⇨2.1**

148k2.1 Most Cited Cases  
 (Formerly 148k2(1))

Whether a particular economic restriction will be rendered invalid by the government's failure to pay for any losses possibly caused by it depends largely on the particular circumstances of the case. U.S.C.A.Const. Amends. 5, 14.

**[4] Eminent Domain ⇨2.1**

148k2.1 Most Cited Cases  
 (Formerly 148k2(1))

Relevant considerations in determining whether

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